



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : **V2(ST)176&177 /North/Appeals/2018-19** / 10840 to 10844
ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-002-APP-13-14-19-20**
दिनांक Date : **20/05/2019** जारी करने की तारीख Date of Issue **31/05/2019**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No. Div-
VII/North/111&112/Refund/Jhankhana/18-19 Dated **15/10/2018** Issued by
Assistant Commissioner , Central GST , Div-VII , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s Jhankhana Builders

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-

Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर

आयुक्त, सहायक / उप आयुक्त अथवा **अधीक्षक** केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है -

(i) धारा 11 डी के अंतर्गत निर्धारित रकम

(ii) सेनवैट जमा की ली गई गलत राशि

(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;

(ii) amount of erroneous Cenvat Credit taken;

(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065



ORDER-IN-APPEAL

Following two appeals have been filed by M/s Jhankhana Builders, A/F-6, Dhanjibhai Complex, Ahmedabad [hereinafter referred to as "the appellant] against Orders-in-Original [hereinafter referred to as "the impugned orders] passed by the Assistant Commissioner of CGST Division-VII, Ahmedabad North [hereinafter referred to as "adjudicating authority"].

S No	Appeal No	Impugned order	Amount
1	176/North-Appeal/18-19	D-VII/North-114/Refund/Jhankhana/18-19 dated 15.10.2018	Rs.3,48,032/-
2	177/North-Appeal/18-19	D-VII/North-112/Refund/Jhankhana/18-19 dated 17.10.2018	Rs.26,702/-

2. The appellant has filed two refund claims amounting to Rs.3,48,032/- and Rs.26,702/- mentioned above before the jurisdictional Assistant Commissioner under the provisions of Rule 5 B of Cenvt Credit Rules, 2004 (CR) on 29.06.2018. A show cause notice dated 13.08.2018, showing various reasons including issue of limitation under the provisions of Rule 5B of CCR for rejecting the said claims was issued to the appellant. Later on, vide the impugned order, the adjudicating authority has rejected both the claim on the grounds limitation without going into the merits of the issue.
3. Being aggrieved, the appellant has filed the above appeals on the grounds that for filing the refund claim, the date has to be counted before the expiry of one year from the due date of filing of the return for the half year; that the refund can be claimed on the reason that it has not used for the other service payment, which has been ascertained by them in the month of June 2017 on completion of re-gst regime. Therefore, they filed the refund claim within one year from the date of last ST-3 filed. The appellant has debited such mount from the Cenvat account in the month of June 2017, so the refund claim is within time. On merit of the case, the appellant has submitted that they rightly availed the input service credit which is eligible to them and accordingly they filed refund under Rule 5 B of CCR.
4. A personal hearing in both the appeals was held on 08.05.2019. Shri Vipul Khandhar, Chartered Accountant appeared for the same and reiterated grounds of appeal. He submitted further written submission.
5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The limited point to be decided in the appeals is regarding eligibility of refund claim under Rule 5B of CCR.
6. At the outset, I observe from the records that the appellant has filed the refund claims in question under Rule 5B of CCR in respect of input service credit of Work Contract Service. A show cause notice date 13.08.2018 was issued to the



appellant for rejecting the claim on the grounds that the appellant were providing the said service by availing exemption notification and accordingly, they were not eligible for Cenvat credit; that they were paying service tax after availing abatement and under Explanation 2 A of Service Tax(Determination of Value) Rule 2006, Cenvat credit cannot be claimed and finally the appellant has filed the claim in question beyond the period of limitation as prescribed under Rule 5B of CER. Since the claims filed by the appellant appeared as hit by limitation, the adjudicating authority has rejected as time barred without going into the merits of the eligibility of the claim.

7. I find that as per provisions of Rule 5 B of CCR, the claims in question were required to be filed before the expiry of one year from the due date of filing of return for the half year. In the instant case, I find that the refund claims filed by the appellant is pertaining to the period of October 2016 to March 2017 and the due date for filing the requisite return for the said period is 25.04.2017. In the impugned order, it was stated that the refund claim was filed 29.06.2018 and therefore, hits by limitation as the claim was required to be filed before 25.04.2018 i.e within one year from the due date of filing the return. The appellant has contended that the refund can be claimed by June 2018 on the reason that the credit was not used towards other service payment, which has been ascertained by them in the month of June 2017 on completion of pre-GST regime. Therefore, they filed the refund claim within one year from the date of last ST-3 filed. The appellant has debited such mount from the Cenvat account in the month of June 2017, so the refund claim is within time. The said argument is baseless and not tenable. The refund claim is required to be filed within one year from the due date of filing of relevant return for which the claim pertains. Therefore, the adjudicating authority has correctly denied the refund as per provisions of Rule 5B of CCR without going into the merit of eligibility of claim.

8. The appellant in their written submission has further contended that when the refund under Rule was not granted, Cenvat credit required to be re-credit to the Cenvat Account and as per transitional provision under Section 142 of CGST Act, 2017, such refund shall be granted in cash only. In this contention also, I do not find any merit. Section 142 (3) of CGST Act say that:

"Every claim for refund filed by any person (3) before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) :

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse :

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.



In the instant case, the adjudicating authority has rejected the credit which shall automatically lapse, in view of provisions of Section 143(3) of CGST Act. In the circumstances, re-credit or refund in cash of such claim does not arise.

9. In view of above discussion, I reject both the appeals filed by the appellant and uphold the impugned order. Both the appeals stand disposed of in above terms.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : .05.2019

Attested

Mohan V.V
(Mohan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.

BY R.P.A.D



To,

M/s Jhankhana Builders,
A/F-6, Dhanjibhai Complex, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad North.
3. The Asstt. Commissioner, (Systems), CGST, Hq., Ahmedabad North
4. The Assistant Commissioner, Division VII, Ahmedabad North.
- ✓ 5. Guard file.
6. P.A file.



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